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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 CAREN M. FUENTES,

11 Plaintiff,

12 v.

13 CAROLYN W. COLVIN, Acting
14 Commissioner of Social Security,
15 Defendant.

Case No.: 15-CV-00412-BEN-MDD

**REPORT AND
RECOMMENDATION ON
CROSS MOTIONS FOR
SUMMARY JUDGMENT**

[ECF NOS. 10, 15]

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18 Plaintiff Caren M. Fuentes (“Plaintiff”) filed this action pursuant
19 to 42 U.S.C. § 405(g) for judicial review of the decision of the
20 Commissioner of the Social Security Administration (“Commissioner”)
21 denying Plaintiff’s second application for a disability and disability
22 insurance benefits under Title II for supplement security income
23 payments under Title XVI of the Social Security Act. Plaintiff moves
24 the Court for summary judgment reversing the Commissioner and
25 ordering an award of benefits, or in the alternative to remand the case

1 for further administrative proceedings. (ECF No. 10). Defendant has
 2 moved for summary judgment affirming the denial of benefits. (ECF
 3 No. 15).

4 For the reasons expressed herein, the Court recommends that
 5 Plaintiff's motion be **DENIED** and Defendant's motion be **GRANTED**.

6 I. BACKGROUND

7 Plaintiff alleges that she became disabled on September 22, 2006,
 8 due to several medical and mental conditions including depression,
 9 anxiety, low blood pressure, thyroid, schizophrenic affective disorder
 10 and a foot condition. (A.R. at 93).¹ Plaintiff's date of birth of August 27,
 11 1965, categorizes her as a younger individual at the time of filing.

12 A. Procedural History

13 In October of 2006, Plaintiff filed applications for social security
 14 disability insurance benefits and supplemental security income. (ECF
 15 No. 10-1 at 4). After a hearing, Administrative Law Judge ("ALJ")
 16 Jesse J. Pease denied Plaintiff's claims by a written decision dated July
 17 30, 2009. (*Id.*). On November 19, 2009, the Appeals Council upheld the
 18 ALJ's decision. (*Id.*).

19 On February 10, 2012, Plaintiff filed a second application for
 20 disability and disability insurance benefits under Title II of the Social
 21 Security Act. (A.R. at 23). On February 17, 2012, Plaintiff also filed a
 22 Title XVI application for supplemental security income. (*Id.*). On May
 23 31, 2012, and upon reconsideration on September 28, 2012, both claims
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25 ¹ "A.R." refers to the Administrative Record filed on May 4, 2015, and is located at ECF No. 8.

1 were denied. (*Id.*). On June 24, 2013, Plaintiff appeared with a non-
2 attorney representative at a hearing in Palm Springs, California before
3 ALJ Joseph D. Schloss. (ECF No. 10-1 at 5). Plaintiff, Medical Expert
4 David Glassmire and Vocational Expert (VE) Troy L. Scott testified.
5 (A.R. at 23).

6 On July 15, 2013, the ALJ issued a written decision finding
7 Plaintiff not disabled. (*Id.*). Plaintiff appealed and the Appeals Council
8 declined to set aside the ALJ's decision. (ECF No. 10-1 at 5).
9 Consequently, the ALJ's decision became the final decision of the
10 Commissioner. (*Id.*).

11 On February 24, 2015, Plaintiff filed a Complaint with this Court
12 seeking judicial review of the Commissioner's decision. (ECF No. 1).
13 On May 4, 2015, Defendant answered and lodged the administrative
14 record with the Court. (ECF Nos. 7, 8). On June 8, 2015, Plaintiff
15 moved for summary judgment. (ECF No. 10). On August 7, 2015, the
16 Commissioner cross-moved for summary judgment and responded in
17 opposition to Plaintiff's motion. (ECF Nos. 15, 16).

18 II. DISCUSSION

19 A. Legal Standard

20 The supplemental security income program provides benefits to
21 disabled persons without substantial resources and little income. 42
22 U.S.C. § 1383. To qualify, a claimant must establish an inability to
23 engage in "substantial gainful activity" because of a "medically
24 determinable physical or mental impairment" that "has lasted or can be
25 expected to last for a continuous period of not less than 12 months." 42

1 U.S.C. § 1383(a)(3)(A). The disabling impairment must be so severe
2 that, considering age, education, and work experience, the claimant
3 cannot engage in any kind of substantial gainful work that exists in the
4 national economy. 42 U.S.C. § 1383(a)(3)(B).

5 The Commissioner makes this assessment through a process of up
6 to five-steps. First, the claimant must not be engaged in substantial,
7 gainful activity. 20 C.F.R. § 416.920(b). Second, the claimant must
8 have a “severe” impairment. 20 C.F.R. § 416.920(c). Third, the medical
9 evidence of the claimant’s impairment is compared to a list of
10 impairments that are presumed severe enough to preclude work. 20
11 C.F.R. § 416.920(d). If the claimant’s impairment meets or is
12 equivalent to the requirements for one of the listed impairments,
13 benefits are awarded. 20 C.F.R. § 416.920(d). If the claimant’s
14 impairment does not meet or is not equivalent to the requirements of a
15 listed impairment, the analysis continues to a fourth and possibly fifth
16 step and considers the claimant’s residual functional capacity. At the
17 fourth step, the claimant’s relevant work history is considered along
18 with the claimant’s residual functional capacity. If the claimant can
19 perform the claimant’s past relevant work, benefits are denied. 20
20 C.F.R. § 416.920(e). At the fifth step, reached if the claimant is found
21 not able to perform the claimant’s past relevant work, the issue is
22 whether claimant can perform any other work that exists in the
23 national economy, considering the claimant’s age, education, work
24 experience, and residual functional capacity. If the claimant cannot do
25

1 other work that exists in the national economy, benefits are awarded.
2 20 C.F.R. § 416.920(f).

3 Section 1383(c)(3) of the Social Security Act, through Section
4 405(g) of the Act, allows unsuccessful applicants to seek judicial review
5 of a final agency decision of the Commissioner. 42 U.S.C. §§ 1383(c)(3),
6 405(g). The scope of judicial review is limited and the Commissioner's
7 denial of benefits "will be disturbed only if it is not supported by
8 substantial evidence or is based on legal error." *Browner v. Secretary of*
9 *Health & Human Services*, 839 F.2d 432, 433 (9th Cir. 1988) (quoting
10 *Green v. Heckler*, 803 F.2d 528, 529 (9th Cir. 1986)).

11 Substantial evidence means "more than a mere scintilla" but less
12 than a preponderance. *Sandqathe v. Chater*, 108 F.3d 978, 980 (9th Cir.
13 1997). "[I]t is such relevant evidence as a reasonable mind might accept
14 as adequate to support a conclusion." *Id.* (quoting *Andrews v. Shalala*
15 53 F.3d 1035, 1039 (9th Cir. 1995)). The court must consider the record
16 as a whole, weighing both the evidence that supports and detracts from
17 the Commissioner's conclusions. *Desrosiers v. Secretary of Health &*
18 *Human Services*, 846 F.2d 573, 576 (9th Cir. 1988). If the evidence
19 supports more than one rational interpretation, the court must uphold
20 the ALJ's decision. *Allen v. Heckler*, 749 F.2d 577, 579 (9th Cir. 1984).
21 When the evidence is inconclusive, "questions of credibility and
22 resolution of conflicts in the testimony are functions solely of the
23 Secretary." *Sample v. Schweiker*, 694 F.2d 639, 642 (9th Cir. 1982).

24 The ALJ has a special duty in social security cases to fully and
25 fairly develop the record in order to make an informed decision on a

1 claimant's entitlement to disability benefits. *DeLorme v. Sullivan*, 924
2 F.2d 841, 849 (9th Cir. 1991). Because disability hearings are not
3 adversarial in nature, the ALJ must "inform himself about the facts
4 relevant to his decision," even if the claimant is represented by counsel.
5 *Id.* (quoting *Heckler v. Campbell*, 461 U.S. 458, 471 n.1 (1983)).

6 Even if a reviewing court finds that substantial evidence supports
7 the ALJ's conclusions, the court must set aside the decision if the ALJ
8 failed to apply the proper legal standards in weighing the evidence and
9 reaching his or her decision. *Benitez v. Califano*, 573 F.2d 653, 655 (9th
10 Cir. 1978). Section 405(g) permits a court to enter a judgment
11 affirming, modifying or reversing the Commissioner's decision. 42 U.S.
12 C. § 405(g). The reviewing court may also remand the matter to the
13 Social Security Administration for further proceedings. *Id.*

14 B. The ALJ's Decision

15 The ALJ concluded Plaintiff was not disabled, as defined in the
16 Social Security Act, from July 30, 2009, through the date of the ALJ's
17 decision, July 15, 2013. (A.R. at 23). The ALJ found that Plaintiff did
18 not make a showing of changed circumstances material to the
19 determination of disability from the first ALJ decision dated July 30,
20 2009. (*Id.*).

21 The ALJ found Plaintiff's schizoaffective disorder, substance
22 induced psychotic disorder with hallucination, methamphetamine
23 dependence and obesity severe. (*Id.* at 26). The ALJ found Plaintiff's
24 diabetes mellitus and thyroid disorder non-severe. (*Id.*). The ALJ
25 found Plaintiff did not have an impairment or combination of

1 impairments that meets or is medically equivalent to the severity of one
2 of the listed impairments in 20 C.F.R. Part 404, Subpart P, Appendix 1
3 (20 C.F.R. 404.1520(d), 404.1525 and 404.1526). (*Id.*). Specifically, the
4 ALJ found that “[n]o treating or examining physician has recorded
5 findings equivalent in severity to the criteria of any listed impairment,
6 nor does the evidence show medical findings that are the same or
7 equivalent to those of any listed impairment.” (*Id.*).

8 The ALJ also found that Plaintiff has mild restrictions in daily
9 living activities, moderate difficulties in social functioning, moderate
10 difficulties with regard to concentration, persistence or pace and
11 experienced no episodes of decompensation of extended duration. (A.R.
12 at 27). The ALJ stated that Plaintiff “is able to perform household
13 tasks, prepare meals, and care for her children.” (*Id.*).

14 The ALJ found that Plaintiff has the residual functional capacity
15 (RFC) to perform a full range of work at all exertional levels, but
16 Plaintiff is limited to simple and repetitive tasks in a habituated work
17 setting, to non-public work with no intense interactions and is
18 precluded from work with machinery or fast paced work. (A.R. at 27-
19 28). Specifically, the ALJ noted that Plaintiff’s past work experience
20 and daily activities illustrate an ability to work. For example, Plaintiff
21 worked at Subway Sandwich Shop for a substantial period of time
22 before quitting because her manager left. (A.R. at 28-29). Additionally,
23 Plaintiff lives with her two teenage children. (A.R. at 28). She takes
24 her children to school, visits her mother who lives nearby, cleans her
25 home, cares for her pets and attends church. (*Id.*). She also is able to

1 vacuum, mop and do the dishes. (*Id.*). Plaintiff also does crafts, like
2 beading and painting. (*Id.*). She reported that she can care for her own
3 personal hygiene needs without assistance, can prepare meals, use
4 public transportation, shop in stores and accompany her children on
5 fieldtrips. (*Id.*).

6 Relying on the testimony of Troy L. Scott, the VE, the ALJ found
7 that although Plaintiff could not perform past work, she could perform
8 other work in the national economy, and therefore did not meet the
9 final step of the evaluation process. (A.R. at 32). Plaintiff's ability to
10 perform work at all exertional levels has been compromised by
11 nonexertional limitations, which have little or no effect on the
12 occupational base of unskilled work at all exertional levels. (*Id.*).

13 Specifically, the ALJ found that Plaintiff can do simple duties that can
14 be learned on the job in a short amount of time and is capable of other
15 basic mental work activities, like understanding, following and
16 remembering simple instructions, appropriately responding to
17 supervision, coworkers and other usual work situations and dealing
18 with changes in a routine work setting. (*Id.*).

19 VE Scott testified that Plaintiff would be able to perform
20 occupations such as an assembler of small products. (*Id.*). Accordingly,
21 the ALJ concluded that "considering [Plaintiff's] age, education, work
22 experience, and RFC, the claimant is capable of making a successful
23 adjustment to other work that exists in significant numbers in the
24 national economy." (*Id.*). The ALJ specifically noted the following to be
25 of particular relevance:

1 1. Plaintiff's Testimony

2 Plaintiff alleged that her condition has worsened since the prior
3 2009 ALJ decision, she is unable to work due to depression, anxiety,
4 back pain, and schizophrenia, has difficulty dealing with the public and
5 has trouble finishing tasks on time. (A.R. at 28). The ALJ found
6 Plaintiff's allegations concerning the intensity, persistence and limiting
7 effects of her symptoms less than fully credible. (A.R. at 29).
8 Specifically, the ALJ found Plaintiff's allegations of disabling mental
9 and physical limitations inconsistent with the objective medical
10 evidence. (*Id.*).

11 The ALJ found it particularly relevant that Plaintiff was not fired
12 from her job at Subway, but quit because her manager left. (*Id.*).
13 Plaintiff's allegations of worsened condition directly conflict with
14 treatment records, which show improvement in her mental condition
15 with abstention from methamphetamine. (*Id.*). Plaintiff also failed to
16 show changed circumstances in her condition since the prior ALJ
17 decision in 2009. (*Id.*).

18 2. Third Party Function Report

19 Norma Avila, Plaintiff's caseworker, submitted a third party
20 function report dated April 24, 2012. (*Id.*). Avila reported that Plaintiff
21 has trouble socializing with others and suffers from sleep disturbance.
22 Avila stated that Plaintiff must be reminded to take medication. (*Id.*).
23 Avila also recounted Plaintiff's daily household abilities and limitations.
24 (*Id.*). The ALJ found Avila's third party function report only partially
25 credible. (*Id.*). He stated that "[u]nless Ms. Avila lives with [Plaintiff],

1 it can be assumed her report was based at least partly on [Plaintiff's]
2 subjective recitation.” (*Id.*). The ALJ also acknowledged that Avila’s
3 statements regarding Plaintiff’s limitations are consistent with
4 schizoaffective disorder, but that “those limitations are not disabling.”
5 (*Id.*).

6 3. Treatment Records

7 The ALJ found that the treatment records after the first
8 application show stabilization of Plaintiff’s schizoaffective disorder with
9 medication. (A.R. at 30). The same records from late 2009 and 2010
10 show an increase in Plaintiff’s symptoms with “continued and
11 intermittent methamphetamine use.” (*Id.*). Even with
12 methamphetamine use, the mental status examination findings
13 indicate moderate impairment with moderate to severe paranoia and
14 hallucinations. (*Id.*). Plaintiff acknowledged that her symptoms were
15 well controlled with medication and sobriety. (*Id.*). Plaintiff’s increased
16 symptoms after losing her job were stabilized after a medication
17 adjustment. (*Id.*). Additionally, Plaintiff’s most recent records indicate
18 that she is doing well on medication, reported only a few mild mood
19 swings and denied any auditory or visual hallucinations. (*Id.*).

20 4. David Glassmire, Ph.D.

21 At the hearing, Dr. Glassmire testified Plaintiff had
22 schizoaffective disorder and methamphetamine abuse. (*Id.*). He
23 considered the time period from July 2009, the date of the prior ALJ
24 decision, to the date of the hearing. (*Id.*). Dr. Glassmire reviewed all
25

1 the exhibits of record, questioned Plaintiff and heard Plaintiff's
2 testimony. (*Id.*).

3 Dr. Glassmire testified that there are not many treatment records
4 since the prior 2009 ALJ decision, but that the available records show
5 Plaintiff has improved since 2009 due to abstaining from
6 methamphetamine and starting prescription medication injections.
7 (*Id.*).

8 Dr. Glassmire opined that Plaintiff has mild restriction in daily
9 living activities, moderate difficulties in social functioning, moderate
10 difficulties with regard to concentration, persistence or pace and
11 experienced no decompensation of extended duration. (*Id.*). Dr.
12 Glassmire stated the maximum RFC determined in the prior ALJ
13 decision is still applicable. (*Id.*).

14 5. Rakesh Bhansali, M.D.

15 The ALJ afforded little weight to the disability statements
16 submitted by Rakesh Bhansali, M.D. (*Id.*). Dr. Bhansali wrote a letter
17 stating that Plaintiff has mood swings even with her injections. (*Id.*).
18 This letter conflicts with medical records indicating improvement in
19 Plaintiff's condition and stabilization with medication compliance. (*Id.*).

20 6. State Agency Review Physicians – Dr. Amado, M.D., and Dr.
21 Funkenstein, M.D.

22 The ALJ afforded great weight to the State agency review
23 physicians who opined the prior ALJ decision should be adopted as
24 Plaintiff failed to show any material change in her position. (*Id.*).
25

1 Nothing in the record contradicts the State agency medical consultants'
2 opinions that Plaintiff does not meet or equal a medical listing.

3 C. Issues on Appeal

4 1. *Res Judicata* Presumption of Non-Disability

5 Plaintiff contends that the ALJ committed harmful legal error in
6 finding that she did not prove changed circumstances since the July
7 2009 ALJ decision. (ECF No. 10-1 at 15-16). Plaintiff argues that the
8 only treating and examining source opinions since the prior ALJ
9 decision indicate marked limitations that would be incompatible with
10 full-time, competitive work. (*Id.*). Plaintiff asserts that this new
11 evidence constitutes changed circumstances. (*Id.*).

12 Defendant argues that Plaintiff's evidence of changed
13 circumstances conflict with the record. (ECF No. 15-1 at 4). Defendant
14 explains that the record indicates Plaintiff's condition improved since
15 the prior decision. (*Id.*).

16 If a prior ALJ decision on a disability claim became final, then
17 administrative *res judicata* applies to a subsequent disability claim
18 under the same title of the Act "if the same parties, facts, and issues are
19 involved in both the prior and subsequent claims." Acquiescence Ruling
20 97-4(9)². A presumption of non-disability exists if the prior final
21 decision by the ALJ found the claimant not disabled. *Chavez v. Bowen*,
22 844 F.2d 691, 693 (9th Cir. 1988). To overcome the presumption of
23

24 ² Acquiescence Rulings "are binding on all components of the Social
25 Security Administration," except under specified circumstances, and
accorded deference by a reviewing court. 20 C.F.R. § 402.35(b)(2).

1 continuing non-disability, the claimant must prove “changed
2 circumstances’ indicating a greater disability.” *Id.* (citing *Taylor v.*
3 *Heckler*, 765 F.2d 872, 875 (9th Cir. 1985)). Changed circumstances
4 include a change in the claimant’s age category, an increase in the
5 severity of the claimant’s impairments, existence of new impairments
6 not previously considered, or a change in the criteria for determining
7 disability. Acquiescence Ruling 97-4(9). Where the prior final decision
8 of non-disability by the ALJ “contained findings on the claimant’s
9 [RFC], education, and work experience, SSA may not make different
10 findings in adjudicating the subsequent disability claim unless there is
11 new and material evidence relating to the claimant’s [RFC], education
12 or work experience.” *Id.*

13 Plaintiff points to Dr. Rakesh Bhansali’s letter dated April 16,
14 2013 as new and material evidence of increased severity. (ECF No. 10-1
15 at 15-16). Dr. Bhansali’s letter opines that Plaintiff is unable to sustain
16 full-time or even part-time work due to her mental condition. (AR at
17 388). Dr. Bhansali explains that Plaintiff was hospitalized in 2006 for
18 manic psychotic break down and has been on injectable medication for a
19 few years. (*Id.*). He further explained that Plaintiff suffered
20 “breakthrough episodes of mood swings and psychotic symptoms” while
21 on the injectable medication. (*Id.*).

22 In 2009, ALJ Pease found that Plaintiff had the RFC “capacity to
23 perform a full range of work at all exertional levels but with the
24 following non-exertional limitations: SRT [simple and repetitive tasks
25 in a] habituated work setting, non-public, no intense interactions, no

1 machinery or fast paced work.” (A.R. at 88). ALJ Pease explained that
2 Plaintiff was hospitalized in September of 2006 and diagnosed with
3 amphetamine-induced psychosis, was hallucinating, delusional and
4 reported using amphetamines. (A.R. at 89). In October 2006, Plaintiff
5 suffered auditory hallucinations daily and was diagnosed with
6 schizoaffective disorder and polysubstance dependence. (*Id.*). In
7 August 2008, Plaintiff reported auditory hallucinations once a week
8 with occasional depressed mood. (*Id.*). In January 2009, Plaintiff
9 reported daily auditory hallucinations with a depressed mood and mood
10 swings. (*Id.*). In April 2009, Plaintiff continued to suffer from
11 hallucinations and depression on a frequent basis. (A.R. at 90).

12 The current ALJ decision adopted ALJ Pease’s RFC after
13 considering objective medical evidence and opinion evidence following
14 April 2009. On December 23, 2009, Plaintiff reported auditory and
15 visual hallucinations, depression, and mood swings. (A.R. at 364). On
16 March 24, 2010 she explained that her medications were working, but
17 still had both auditory and visual hallucinations. (A.R. at 362). She
18 reported improvement in depression, but explained her mood swings
19 were “up and down still.” (*Id.*). Plaintiff also reported she used
20 methamphetamine for one week daily, the week prior to March 24,
21 2010. (*Id.*). On April 13, 2010, Plaintiff reported she was still taking
22 methamphetamine. (A.R. at 360). She reported serious paranoia,
23 anxiety, fear, and suffered visual and auditory hallucinations. (*Id.*). On
24 June 29, 2010, Plaintiff reported exacerbated symptoms and explained
25 she was still using methamphetamine. (A.R. at 358).

1 By January 31, 2011, Plaintiff began reporting that her symptoms
2 were well controlled with her medication and denied drug use. (A.R. at
3 353, 354). On August 10, 2011 Plaintiff explained that “her meds are
4 beneficial,” but that she still gets nervous and anxious sometimes.
5 (A.R. at 352). She indicated that she wanted to continue on her current
6 management plan. (*Id.*). On February 29, 2012, Plaintiff reported that
7 her psychiatric symptoms were worsening since she quit her job. (A.R.
8 at 351).

9 Treatment notes from April 12, 2012, show that Plaintiff was
10 “doing better on her current meds regimen” and was “sleeping and
11 eating fine.” (A.R. at 350). She explained that she had “no delusions,
12 paranoid ideations or no ideas of reference.” (*Id.*). On July 12, 2012,
13 Plaintiff reported to Dr. Bhansali that she was doing “OK” and found
14 the injectable medication “very helpful.” (A.R. at 368). She also
15 explained that she “stopped hearing voices” and denied having
16 delusions. (*Id.*).

17 On April 16, 2013, the date of Dr. Bhansali’s letter, Plaintiff
18 reported “doing OK” and explained that overall her “medication is
19 helping.” (A.R. at 387). She reported that she still has some mild mood
20 swings that do not cause significant problems, denied “hearing voices,
21 seeing things” and “other positive psychotic symptoms.” (*Id.*).
22 Additionally, she reported sleeping well, that her motivation and energy
23 levels were okay and denied suicidal thoughts. (*Id.*). Dr. Bhansali
24 opines in his letter that Plaintiff’s psychotic condition impairs her
25 ability to focus for a sustained amount of time, impairs her motivation,

1 and impairs her ability to work. (A.R. at 388). This directly conflicts
2 with the treatment record from the same date, where Plaintiff reported
3 having adequate motivation and energy. (A.R. at 387).

4 Dr. Bhansali noted that Plaintiff has a medically documented
5 persistence of marked incoherence, illogical thinking, sleep disturbance,
6 decreased energy, and thoughts of suicide. (A.R. at 390). As indicated
7 above, the objective treatment record contradicts Dr. Bhansali's
8 findings. (See A.R. 350 ("she is sleeping and eating fine" and denies
9 suicidal ideation), 352 ("sleeping OK" and no suicidal ideation), 353
10 ("denies any SI/HI plans or intentions"), 354 ("denies any SI/HI plans or
11 intentions" and Plaintiff "admitted feeling good about being a
12 contributing member of the society"), 385 ("she last experienced suicidal
13 ideations about 20 years ago but none since then")).

14 Dr. Bhansali's psychiatric questionnaire also directly conflicts
15 with Plaintiff's Adult Function Report. (A.R. at 392-400). For example,
16 Dr. Bhansali found that Plaintiff had a marked limitation in her ability
17 to remember locations and work-like procedures, understand and
18 remember detailed instructions, carry out detailed instructions,
19 maintain attention and concentration for extended periods and accept
20 instructions and respond appropriately to criticism from supervisors.
21 (*Id.*). In contrast, Plaintiff reported that she can pay attention for an
22 hour, follows written instructions well, follows spoken instructions
23 "good," gets along okay with authority figures and handles changes in
24 routines "OK." (A.R. at 284-86).

1 Plaintiff's impairments have not increased in severity since the
2 prior ALJ decision. Plaintiff concedes that "the record does show some
3 evidence of improvement . . . undoubtedly as a consequence of both her
4 abstinence from drugs and the positive effects of her medication
5 regiment." (ECF No. 10-1 at 19). Plaintiff further admits that her
6 "condition has shown some sporadic improvement." (ECF No. 10-1 at
7 17). Even with Plaintiff's "repeated resumption of psychotic symptoms,"
8 the treatment record shows stabilization with medication and only
9 moderate impairment – both of which are improvements since
10 Plaintiff's prior disability determination in 2009. (ECF No. 10-1 at 19;
11 A.R. 350-69). Plaintiff has not shown changed circumstances to rebut
12 the presumption of non-disability. Additionally, Dr. Bhansali's letter
13 does not warrant a different RFC from the prior ALJ decision because it
14 is unsupported by the objective medical record.

15 2. Weight Afforded to Dr. Bhansali and Dr. Berg

16 Plaintiff contends that the ALJ erred in granting little or no
17 weight to the opinions of treating psychiatrist Bhansali and examining
18 psychologist Berg. (ECF No. 10-1 at 16). Specifically, Plaintiff asserts
19 that the ALJ did not have clear and convincing or specific and
20 legitimate reasons supported by substantial evidence to contradict Dr.
21 Bhansali's opinion and did not consider Dr. Berg's opinion at all. (*Id.* at
22 16, 19).

23 Defendant asserts that the ALJ properly afforded little weight to
24 Dr. Bhansali's opinion because it is unsupported by the objective
25 treatment record. (ECF No.15-1 at 8). Defendant also explains that

1 Plaintiff did not submit Dr. Berg's opinion until after the ALJ issued his
2 decision and that the ALJ "could not comment on a report that was not
3 provided to him." (*Id.* at 10). Defendant argues that even with Dr.
4 Berg's opinion the ALJ decision should be upheld because it is contrary
5 to the objective medical record. (*Id.* at 13).

6 Where the record contains medical evidence conflicting with a
7 treating or examining physician's opinion, "the ALJ is charged with
8 determining credibility and resolving the conflict." *Benton v. Barnhart*,
9 331 F.3d 1030, 1040 (9th Cir. 2003). Generally, a treating physician's
10 opinion carries more weight than a non-treating physician and an
11 examining physician's opinion carries more weight than a non-
12 examining physician. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 2008).
13 Where a treating or examining physician's opinion is contradicted by
14 another doctor, the ALJ may reject the opinion if there are "specific and
15 legitimate reasons in the record that are supported by substantial
16 evidence." *Carmickle v. Comm'r, Soc. Sec. Admin.*, 533 F.3d 1155, 1164
17 (9th Cir. 2008) (citing *Lester*, 81 F.3d at 830-31).

18 a. Dr. Bhansali

19 Dr. Glassmire, an impartial medical expert who reviewed all the
20 medical and other exhibits prior to the hearing, testified that "the
21 records in general show that [Plaintiff] has improved since 2009 largely
22 due to getting off the methamphetamine and starting the injectable
23 medication." (A.R. at 43). He explained that he found Dr. Bhansali's
24 opinions indicating that Plaintiff is disabled with several marked
25 limitations as being unsupported in the ongoing treatment records.

1 (A.R. at 45). After providing in-depth testimony about Plaintiff's
2 treatment records, Dr. Glassmire concluded that "the record generally
3 indicates that when [Plaintiff] stopped using methamphetamine in
4 early 2011 her symptoms generally became stable, particularly while
5 she was taking the injectable anti-psychotic medication." (A.R. at 49).

6 Dr. Glassmire's opinion contradicts Dr. Bhansali. As a result, the
7 ALJ could reject Dr. Bhansali's opinion if there were specific and
8 legitimate reasons in the record that are supported by substantial
9 evidence. *Carmickle*, 533 F.3d at 1164. The ALJ gave two specific and
10 legitimate reasons in the record for giving Dr. Bhansali's opinion little
11 weight. First, the medical records indicated improvement in Plaintiff's
12 condition with abstention from methamphetamine. (A.R. at 31). As
13 explained above, the treatment records provide substantial evidence of
14 improvement. (A.R. at 350-64). Second, the ALJ stated that Dr.
15 Glassmire found Dr. Bhansali's letter unsupported by the treatment
16 records. (A.R. at 31). As previously indicated, this is also substantiated
17 by the contradictions between Dr. Bhansali's medical opinion and the
18 objective treatment records. (A.R. at 350-64, 392-400). An "ALJ need
19 not accept the opinion of any physician including a treating physician, if
20 that opinion is brief, conclusory and inadequately supported by clinical
21 findings." *Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228 (9th
22 Cir. 2009). The ALJ properly afforded little weight to Dr. Bhansali's
23 opinion.

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1 b. Dr. Berg

2 Dr. Berg, an examining physician, administered a psychological
3 history questionnaire, mental status examination, a psychological
4 impairment questionnaire, and several tests on May 23, 2013. (A.R. at
5 400). The hearing was held on June 24, 2013, over a month after Dr.
6 Berg's examination of Plaintiff. (A.R. at 38). The ALJ did not receive
7 Dr. Berg's opinions and findings until after the decision. (A.R. at 320
8 ("Since the recent decision, this office obtained and submitted a medical
9 opinion from examining psychologist, Dr. Gene Berg.")).

10 Plaintiff's argument that the ALJ "cannot reach a conclusion by
11 ignoring competent evidence which would support the opposite result"
12 without explaining "why 'significant probative evidence has been
13 rejected'" is irrelevant because the ALJ was not given the evidence to
14 consider before making a decision. (ECF No. 10-1 at 19) (citing *Gallant*
15 *v. Heckler*, 753 F.2d 1450, 1456 (9th Cir. 1984) and *Vincent v. Heckler*,
16 730 F.2d 1393, 1394-95 (9th Cir. 1984), (A.R. at 320). Additionally,
17 Plaintiff is incorrect in stating that the Appeals Council did not even
18 acknowledge Dr. Berg's opinion. (ECF No. 10-1 at 19). The Appeals
19 Council reviewed Dr. Berg's medical opinion, but found that it did not
20 provide a basis for changing the ALJ's decision. (A.R. at 2).

21 "When the Appeals Council considers new evidence in deciding
22 whether to review a decision of the ALJ, that evidence becomes part of
23 the administrative record, which the district court must consider when
24 reviewing the Commissioner's final decision for substantial evidence."
25

1 *Brewes v. Comm’r of Soc. Sec. Admin.*, 682 F.3d 1157, 1163 (9th Cir.
2 2012) (citing *Tackett v. Apfel*, 180 F.3d 1094, 1097-98 (9th Cir. 1999)).

3 Dr. Berg’s medical opinion consists of a letter to Plaintiff’s counsel
4 and a psychological impairment questionnaire. (AR at 400-12). Dr.
5 Berg acknowledged that Plaintiff was referred for a psychological
6 evaluation by her counsel. (A.R. at 400). He based his opinion on his
7 examination, Dr. Bhansali’s letter and Plaintiff’s medical records from
8 Imperial County Behavioral Health for 2011. (*Id.*).

9 Dr. Berg found that Plaintiff’s grooming and hygiene were
10 appropriate, she was alert and oriented to time, place and
11 circumstances, her speech was of average rate and volume, her eye
12 contact was appropriate and she was compliant and cooperative. (A.R.
13 at 401). Plaintiff reported to Dr. Berg that she did not have homicidal
14 or suicidal ideation, but did have episodes of depression, sadness,
15 suicidal ideation, anxiety, and episodes of changing mood and mood
16 instability. (*Id.*). Plaintiff also reported irregular sleep, “vaguely”
17 hearing voices and seeing things and that she feels “fearful about the
18 devil wanting to take her and take her soul.” (*Id.*). Additionally,
19 Plaintiff denied using methamphetamine and told Dr. Berg she drank
20 alcohol excessively in her younger years. (A.R. at 402).

21 Dr. Berg explained that the medical records indicate that Plaintiff
22 “has fewer mental health symptoms” than alleged, but substantiated a
23 history of mental illness. (*Id.*). After Plaintiff took The Bender Visual
24 Motor Gestalt Test (Bender), the Shipley Institute of Living Scale, Wide
25 Range Achievement Test (WRAT-4) and the Minnesota Multiphasic

1 Personality Inventory (MMPI-2) tests, Dr. Berg opined that “it is likely
2 that the client exaggerated the extent of some of her personal
3 difficulties.” (A.R. at 400-03).

4 Dr. Berg concluded there is sufficient evidence that Plaintiff
5 “suffers from a major mental disorder which significantly impacts upon
6 her social occupational functioning” and that Plaintiff “would not be
7 able to work a full time job in the next year.” (A.R. at 404).

8 Dr. Berg’s opinion is based only on Dr. Bhansali’s letter, which is
9 unsupported by the objective medical record, and Plaintiff’s 2011
10 medical records, which do not support Dr. Berg’s opinion. (A.R. at 400).

11 On January 1, 2011, Plaintiff was found socially unimpaired, felt
12 that her symptoms were well controlled with her injected medication,
13 overall “admitted feeling good about being a contributing member of
14 society” and was making efforts to empower and boost her self-esteem.
15 (A.R. at 354). She also denied auditory or visual hallucinations,
16 paranoia and depressive or manic symptoms. (*Id.*). She was alert, well
17 groomed, kept eye contact, had no signs of agitation, no abnormal
18 movements and denied any homicidal or suicidal ideations. (*Id.*). This
19 is contrary to Dr. Berg’s findings of social withdrawal or isolation,
20 hostility and irritability, delusions or hallucinations, suicidal ideation
21 or attempts and paranoia or inappropriate suspiciousness. (A.R. at
22 406).

23 On May 19, 2011, Plaintiff reported she was happy to move in to
24 her new place, denied auditory or visual hallucinations, paranoia,
25 depressive or manic symptoms, suicidal or homicidal ideations, slept

1 five to six hours a night and felt her symptoms were well controlled
2 with medication. (A.R. at 353). She was alert, well groomed, kept eye
3 contact, had no signs of agitation and no abnormal movements. (*Id.*).
4 Additionally, she was found to have no social impairments. (*Id.*). Dr.
5 Berg's findings of delusions or hallucinations, suicidal ideation or
6 attempts, paranoia or inappropriate suspiciousness, sleep disturbance,
7 social withdrawal or isolation and hostility or irritability are
8 unsupported by the record. (A.R. at 406).

9 On August 10, 2011, Plaintiff reported some residual paranoid
10 ideations and that she gets nervous and anxious sometimes, but that
11 she is doing fairly okay and sleeping okay. (A.R. at 352). She felt her
12 medications were still beneficial, reported no overwhelming stressors,
13 and denied symptoms of mania, suicidal or homicidal ideation and no
14 auditory or visual hallucinations. (*Id.*). Her cognition and memory
15 were intact, she had good eye contact, hygiene and cooperation, no
16 abnormal motor movements and normal speech. (*Id.*). This contradicts
17 Dr. Berg's findings of paranoia or inappropriate suspiciousness, sleep
18 disturbance, hostility and irritability, suicidal ideation or attempts and
19 delusions or hallucinations. (A.R. at 406).

20 On November 11, 2011, Plaintiff denied auditory or visual
21 hallucinations and said "the medication helps me a lot . . . I haven't had
22 any hallucinations since taking it." (A.R. at 379). Additionally, her
23 symptoms and behaviors were found not to impair her activities of daily
24 living. (A.R. at 380). Plaintiff reported that she regularly initiates
25 social contacts, communicates clearly with others, participates in group

1 activities, is not involved in arguments or fights, does not fear strangers
2 or avoid interactions, and explained that she enjoys beading and
3 shopping. (*Id.*). She was well-groomed, well dressed, oriented, had good
4 eye contact, normal mood, calm motor activity, intact thought process,
5 normal speech, and difficulties falling asleep. (A.R. at 384). Plaintiff
6 explained that she “last experienced suicidal ideations about 20 years
7 ago but none since then.” (A.R. at 385). This is contrary to Dr. Berg’s
8 findings of delusions or hallucinations, significant social functioning
9 impairments, paranoia or inappropriate suspiciousness, suicidal
10 ideation or attempts, social withdrawal or isolation and hostility and
11 irritability. (A.R. at 404-06).

12 Notably, Dr. Berg failed to review Plaintiff’s entire medical record
13 following the prior ALJ decision, despite existing treatment records
14 from 2009 until 2013. (A.R. at 349-69). Dr. Berg’s opinion is given little
15 weight due to his limited review of the objective medical record. He
16 could not reasonably substantiate his conclusion without reference to
17 Plaintiff’s entire objective medical record. *See Sandqathe*, 108 F.3d at
18 980 (“[Substantial evidence] is such relevant evidence as a reasonable
19 mind might accept as adequate to support a conclusion.”).

20 3. Credibility of Plaintiff’s Testimony

21 In her motion, Plaintiff argues that the ALJ failed to articulate
22 clear and convincing reasons for rejecting her testimony. (ECF No. 10-1
23 at 20). Specifically, Plaintiff contends that the ALJ erred by: (1) finding
24 her daily activities demonstrate a greater mental capacity than alleged;
25 (2) considering her work at Subway for over a year as evidence Plaintiff

1 is capable of working; and (3) finding the record evidence demonstrates
2 an improvement in Plaintiff's alleged mental disability. (*Id.* at 23-24).
3 Plaintiff concludes that the ALJ's decision is based on "an unjustifiably
4 inaccurate account of the record evidence." (*Id.* at 22).

5 Defendant contends that the ALJ properly found Plaintiff's
6 subjective complaints not credible. (ECF No. 15-1 at 14). Particularly,
7 Defendant explains that the ALJ found Plaintiff's alleged limitations
8 inconsistent with the objective medical evidence, that her daily
9 activities indicated she could work and that Plaintiff quit her job
10 because her manager left, not due to her limitations. (*Id.* at 16).
11 Additionally, Defendant states that Dr. Glassmire's opinion that
12 Plaintiff "retained the ability to perform a limited range of unskilled
13 work" constitutes substantial evidence to support the ALJ's RFC
14 finding and that she failed to show changed circumstances.

15 The ALJ must make two findings before he can find Plaintiff's
16 testimony not credible. *Treichler v. Commissioner of SSA*, 775 F.3d
17 1090, 1102 (9th Cir. 2014). The ALJ must first determine "whether the
18 claimant has presented objective medical evidence of an underlying
19 impairment 'which could reasonably be expected to produce the pain or
20 other symptoms alleged.'" *Id.* (quoting *Lingenfelter v. Astrue*, 504 F.3d
21 1028, 1036 (9th Cir. 2007) (quoting *Bunnell v. Sullivan*, 947 F.2d 341,
22 344 (9th Cir. 1991)). Second, if the claimant has produced such
23 objective medical evidence, "and the ALJ has not determined that the
24 claimant is malingering, the ALJ must provide 'specific, clear and
25 convincing reasons for' rejecting the claimant's testimony regarding the

1 severity of the claimant's symptoms." *Id.* (quoting *Smolen v. Chater*, 80
2 F.3d 1273, 1281 (9th Cir. 1996). The ALJ must specifically identify the
3 testimony he finds not to be credible and explain what evidence
4 undermines that testimony. *Holohan v. Massanari*, 246 F.3d 1195,
5 1208 (9th Cir. 2001).

6 In this case, the ALJ did find that Plaintiff's medically
7 determinable impairments could reasonably be expected to cause some
8 of the alleged symptoms. (A.R. at 29). However, the ALJ found
9 Plaintiff's testimony "less than fully credible." (*Id.*). The ALJ cited to
10 the objective medical evidence in the record, Plaintiff's daily activities,
11 evidence regarding Plaintiff's medical treatment and inconsistencies in
12 Plaintiff's testimony.

13 a. Objective medical evidence in the record

14 Where the ALJ has found that medically determinable
15 impairments could reasonably be expected to cause the alleged
16 symptoms, the ALJ may not reject a claimant's statements regarding
17 intensity or severity of pain or its effect on the ability to work solely
18 because it is not supported by the objective medical evidence. 20 C.F.R.
19 § 404.1529(c)(2). "The ALJ must specifically identify what evidence
20 undermines the claimant's complaints." *Parra v. Astrue*, 481 F.3d 742,
21 750 (9th Cir. 2007).

22 Here, the ALJ found Plaintiff had the severe impairment of
23 schizoaffective disorder, substance induced psychotic disorder with
24 hallucination and methamphetamine dependence. Plaintiff's obesity
25 was found to be a severe impairment and was considered in

1 determining her RFC. (A.R. at 26). The ALJ reviewed and considered
2 the Plaintiff's medical history in determining that the evidence did not
3 support the severity of Plaintiff's alleged symptoms. (A.R. at 29).

4 The ALJ determined that "the records do not corroborate
5 Plaintiff's allegations of worsening symptoms in her condition since
6 2009." (A.R. at 29). Specifically, the ALJ found that Plaintiff's
7 treatment records show improvement in her mental condition once she
8 stopped using methamphetamine. For example, in January 2011, after
9 her last admitted use of methamphetamine, Plaintiff was treated by Dr.
10 Chennamchetty, M.D. During that appointment Plaintiff appeared well
11 groomed, maintained eye contact, and showed no signs of agitation.
12 (A.R. at 354). Dr. Chennamchetty's report notes that Plaintiff was
13 working at that time that she felt good about being a contributing
14 member of society. (A.R. at 354). Dr. Chennamchetty assessed
15 Plaintiff's GAF at 60. (*Id.*). Similarly, in May of 2011, during
16 Plaintiff's follow-up with Dr. Chennamchetty, Plaintiff's mood was good.
17 She had no delusions and she reported her psychiatric symptoms were
18 well controlled. (A.R. at 353). In August of 2011, Plaintiff was seen for
19 foot/leg pain. (A.R. at 339). The attending nurse noted in Plaintiff's
20 medical record that Plaintiff's mental status was found to be within
21 normal limits. (A.R. at 342). At that time, Plaintiff reported she
22 continued to have anxiety and depression but no hallucinations. (A.R.
23 at 340). In December of 2011, at a follow-up exam for Plaintiff's foot/leg
24 pain, Dr. Mashhadian, D.O. reported that Plaintiff still complained of
25 leg cramps but she presented with no altered mental state. (A.R. at

1 333). Notably, Dr. Glassmire testified that “the records in general show
2 that the [Plaintiff] has improved since 2009 largely due to getting off
3 methamphetamine and starting injectable medication.” (A.R. at 43).
4 Based upon these records the ALJ determined that Plaintiff’s mental
5 status stabilized once she stopped using methamphetamine and with
6 the benefit of regular follow-up care.

7 The ALJ noted that Plaintiff suffered a set-back in her mental
8 functioning in February 2012. She reported to one of her treating
9 physicians, Dr. Adiboshi, that her psychiatric symptoms were
10 worsening. However, Dr. Adiboshi reported that Plaintiff’s judgment
11 and insight were fair, her thought content contained no delusions,
12 paranoid ideations and no ideations of reference. Dr. Adiboshi also
13 noted that her attitude was cooperative despite being anxious and
14 irritable. (A.R. at 351).

15 In addition, the ALJ considered other opinion evidence in the
16 record. In particular, he cited to testifying medical expert Dr.
17 Glassmire. Dr. Glassmire testified that Plaintiff could work but would
18 be limited to simple non-exertional “repetitive tasks in a habituated
19 work setting; non-public with no intention (sic) or actions with the
20 public, and no machinery or fast-paced work.” (A.R. at 45).

21 After considering the objective medical evidence in the record, the
22 ALJ found insufficient support for the level of limitations alleged by
23 Plaintiff. Consequently, the ALJ’s rejection of Plaintiff’s allegations of
24 disabling mental limitations was not error.

25 //

1 b. Daily Activities

2 The Social Security regulations explicitly instruct an ALJ to
3 evaluate the claimant's daily activities when determining the claimant's
4 credibility. 20 C.F.R. § 404.1529(c)(3)(I); Social Security Ruling 96-7p,
5 (SSA July 2, 1996). An ALJ is permitted to use "ordinary techniques of
6 credibility evaluation" such as inconsistent prior statements.

7 *Tonapetyan v. Halter*, 242 F.3d 1144, 1148 (9th Cir. 2001).

8 "Consistency is one strong indication of the credibility of an individual's
9 statements" Social Sec. Ruling, 96-7p, (SSA July 2, 1996).

10 The ALJ found Plaintiff's self-reported daily activities appeared to
11 demonstrate greater functional capacity than Plaintiff alleged. (A.R. at
12 27). For example, Plaintiff stated her daily routine consists of getting
13 her children off to school, cooking breakfast, doing the dishes, doing
14 light cleaning, getting crafts, picking up the children, and cooking
15 dinner. (A.R. at 279). Plaintiff also reported that she enjoys beading
16 and bike riding, both of which she does well and on a daily basis. (A.R.
17 at 283). Plaintiff reported she regularly goes to church, her sister's
18 house, and on field trips with her children, but needs to be reminded to
19 go places and cannot go alone. (*Id.*). At the administrative hearing,
20 Plaintiff testified she beads necklaces and paints. (A.R. at 53). She also
21 testified that every other day she cleans around the house including
22 vacuuming, mopping, dumping the trash and doing the dishes. (A.R. at
23 55). According to Plaintiff, her father "comes in weekly and checks" to
24 make sure she is doing her chores. (A.R. at 56).

25 It is well settled that "[d]isability does not mean that a claimant

1 vegetate in a dark room excluded from all forms of human and social
2 activity.” *Cooper v. Bowen*, 815 F.2d 557, 561 (9th Cir. 1987) (internal
3 citations omitted). An ALJ may, however, discredit a claimant’s
4 statements when the claimant reports participation in everyday
5 activities indicating capacities that are transferable to a work setting.
6 *See Morgan v. Cmm’r Soc. Sec. Admin.*, 169 F.3d 595, 600 (9th Cir.
7 1999); *Fair*, 885 F.2d at 603. Even where those activities suggest some
8 difficulty functioning, they may be grounds for discrediting the
9 claimant’s testimony to the extent that they contradict claims of a
10 totally debilitating impairment. *See Valentine v. Comm’r Soc. Sec.*
11 *Admin.*, 574 F.3d 685, 693 (9th Cir. 2009). After considering the
12 relevant evidence in the record, the ALJ found insufficient support for
13 the level of limitations alleged by the Plaintiff. Specifically, the ALJ
14 stated “[s]ome of the physical and mental disabilities and social
15 interactions required in order to perform these activities are the same
16 necessarily for obtaining and maintaining employment. [Plaintiff’s]
17 ability to participate in such activities diminishes the credibility of the
18 [Plaintiff’s] allegations of functional limitations.” (A.R. at 29).

19 c. Medical Treatment

20 Evidence that a claimant only received conservative treatment is a
21 valid ground for questioning claimant’s assertions regarding severity of
22 pain or symptoms. *Johnson v. Shalala*, 60 F.3d 1428, 1434 (9th Cir.
23 1995). Additionally, the ALJ is permitted to consider the effectiveness
24 of medication in treating Plaintiff’s symptoms. Social Security Ruling
25 88-13. Here, the ALJ opined that the treatment records fail to show a

1 decline in Plaintiff's condition since the time of the prior ALJ decision.
2 (A.R. at 30).

3 The ALJ considered the effectiveness of medications used to treat
4 Plaintiff's condition. The record shows Plaintiff was prescribed Invega
5 Sustenna by monthly injection, Risperdal and Klonopin. (A.R. at 30).
6 The ALJ noted that her medical records indicated a stabilization of
7 symptoms with medication. (*Id.*). Likewise, as noted earlier, Dr.
8 Glassmire testified that "[t]he records in general show that the
9 [Plaintiff] has improved since 2009 largely due to getting off the
10 methamphetamine and starting the injectable medication." (A.R. at 43).

11 At her medical appointments in December 2009 (A.R. at 364),
12 March 2010 (A.R. at 362), April 2010 (A.R. at 360), June 2010 (A.R. at
13 359) and August 2010 (A.R. at 356), Plaintiff reported actively using
14 methamphetamine. Tellingly, Plaintiff's treatment records for 2010,
15 2011, and 2012, including when she was still a regular
16 methamphetamine user, demonstrate only two reports of delusions,
17 three reports of moderate auditory hallucinations and no reports of
18 visual hallucinations. (A.R. at 356, 359, 360, 362, and 364). This was
19 substantiated by Dr. Glassmire's testimony in response to questioning
20 by Plaintiff's Representative:

21 Q: Doctor, you mentioned that the Claimant continued to
22 have residual symptoms, including paranoia and suicidal
23 ideation at several points in the record, correct?

24 A: I mentioned that – those were mentioned one or two
25 times; wouldn't say several times in the record. But she
did report those symptoms on occasions.

(A.R. at 49).

1 As noted herein, the ALJ identified several contradictions between
2 Plaintiff's claims of disability and the medical treatment evidence
3 presented in the record. *Sample v. Schweiker*, 694 F. 2d at 642 ("In
4 reaching his findings, the administrative law judge is entitled to draw
5 inferences logically flowing from the evidence"). The ALJ's citations to
6 the record evidence regarding Plaintiff's treatment represent clear and
7 convincing reasons for finding Plaintiff less than credible regarding her
8 functional limitations.

9 d. Inconsistencies in Plaintiff's Testimony

10 An acceptable reason that an ALJ may consider when assigning
11 little weight to a claimant's testimony is inconsistency in the claimant's
12 testimony. *Orn v. Astrue*, 495 F.3d 625, 636 (9th Cir. 2007). In this
13 case, Plaintiff testified that she had not used methamphetamine for five
14 to seven years at the time of the hearing. (A.R. at 42). However, the
15 medical records clearly document Plaintiff's methamphetamine use in
16 2009 and throughout 2010. (A.R. at 356, 359, 360, 362, 364).
17 Additionally, Plaintiff stated in her Adult Function Report that she is
18 unable to handle money, handle a savings account or use a
19 checkbook/money orders. (A.R. at 282). Plaintiff testified at her
20 administrative hearing, however, that her duties while employed at
21 Subway included keeping track of inventory, cleaning the back room
22 and working the register. (A.R. at 51).

23 Tellingly, Plaintiff never testified that she could not work. She
24 testified that she sometimes had difficulty dealing with the public in
25 her last job with Subway and she also noted in her Adult Function

1 Report that she doesn't handle stress well. (A.R. at 285). In the same
 2 report, however, she noted that most of the time she finishes what she
 3 starts, follows written instructions well, follows spoken instructions
 4 "good", gets along with authority figures "OK", has never been fired due
 5 to problems of getting along with other people and handles changes in
 6 routine "OK". (A.R. at 285).

7 The ALJ made specific findings justifying his decision to
 8 disbelieve an allegation of disability. The ALJ discussed the evidence
 9 and provided clear and convincing reasons upon which his adverse
 10 determination of Plaintiff's credibility was based. *Treichler v.*
 11 *Commissioner of Social Sec. Admin.*, 775 F.3d 1090, 1103 (9th Cir.
 12 2014). "Credibility determinations are the province of the ALJ" and are
 13 entitled to deference if sufficiently supported by the record. *Fair v.*
 14 *Bowen*, 885 F.2d 597, 604 (9th Cir. 1989) (citing *Russell v. Bowen*, 856
 15 F.2d 81, 83 (9th Cir. 1988)). "Where, as here, the ALJ has made specific
 16 findings justifying a decision to disbelieve an allegation. . . and those
 17 findings are supported by substantial evidence in the record, our role is
 18 not to second guess that decision." *Id.*

19 III. SUBSTANTIAL EVIDENCE ANALYSIS

20 A review of the record presented, demonstrates that substantial
 21 evidence supports the ALJ's decision finding Plaintiff not disabled with
 22 the RFC to perform "unskilled entry-level work requiring little or no
 23 judgment to do simple duties that can be learned on the job in a short
 24 period of time (20 CFR 404.1568 and 416.968)." (A.R. at 32). The ALJ
 25 gave great weight to the opinion of Dr. Glassmire, the testifying expert,

1 regarding Plaintiff's mental disability claims. (A.R. at 32). Likewise,
2 the opinions of the State agency review physicians Dr. Amado and Dr.
3 Funkenstein were given great weight by the ALJ. (A.R. at 31).

4 Acknowledging the preference for treating physicians' opinions
5 over other medical source opinions, the ALJ stated, "it is possible in a
6 particular case, depending on all the facts of that case, to give greater
7 weight to the opinion of a non-examining source." (A.R. at 33 citing 20
8 C.F.R. 404.1527 and 416.927). With this general preference in mind,
9 the ALJ set forth specific and legitimate reasons based on substantial
10 evidence in the record for crediting the opinions of Dr. Glassmire, Dr.
11 Amado and Dr. Funkenstein.

12 The ALJ gave great weight to the opinion of Dr. Glassmire, the
13 testifying expert. The Ninth Circuit has held the ALJ may give more
14 weight to doctors, non-examining or otherwise, who testify because they
15 have been subject to cross-examination. *Andrews v. Shalala*, 53 F.3d
16 1035, 1042 (9th Cir. 1995). Dr. Glassmire testified that Plaintiff's
17 medical record supports a finding of mild restriction in activities of
18 daily living, with moderate difficulties in social functioning,
19 concentration, persistence and pace. (A.R. at 44). Dr. Glassmire also
20 noted that Plaintiff has "experienced no episodes of decompensation."
21 (*Id.*). Dr. Glassmire ultimately opined that he saw nothing in Plaintiff's
22 medical records to date that would change the RFC attributed to
23 Plaintiff in the ALJ's final decision dated July 30, 2009, based upon her
24 prior application for disability benefits. (A.R. at 45).

25 The ALJ found that the reports of State agency consultants, Dr.

1 Amado, and Dr. Funkenstein deserved great weight. According to the
2 ALJ, “State agency medical consultants are specifically empowered to
3 make judgments regarding whether a person has the severity of
4 symptoms required either singly or in combination to meet or equal any
5 conditions found under the medical Listings (see 20 CFR 404.1527(f)(1)
6 and 416.927(f)(1)).” (A.R. at 31).

7 The ALJ cited to Dr. Amado’s report which stated that updated
8 medical records show an “improvement trend, with claimant retaining
9 sobriety.” (A.R. at 138). Dr. Amado went on to state, “[i]f anything
10 there has been an improvement vis-à-vis the unfavorable ALJ decision
11 on file, but by convention best to adopt ALJ determination as (in this
12 case) more restrictive/more favorable to the claimant.” (*Id.*).

13 Dr. Funkenstein’s review and report of Plaintiff’s records led him
14 to conclude that Plaintiff’s RFC as set out by the previous ALJ in 2009
15 is consistent with Plaintiff’s current RFC. (A.R. at 102). For example,
16 Plaintiff is only moderately limited in a few functional areas including
17 the ability to carry out detailed instructions, maintain attention and
18 concentration for extended periods, or interact appropriately with the
19 general public. (A.R. at 101). Dr. Funkenstein also reported that
20 Plaintiff had no adaptation limitations. (A.R. at 102).

21 The ALJ clearly relied on the findings of the treatment record and
22 reports cited in the administrative record. The ALJ’s findings are
23 consistent with the record as a whole. Title 20 C.F.R. § 416.920(b)
24 states “after the [ALJ] review[s] all of the evidence relevant to your
25 claim, including medical opinions [the ALJ] make[s] findings about

what the evidence shows.” (*Id.*). Further, Title 20 C.F.R. § 416.927(6)(d)(1) states in part, “[the ALJ is] responsible for making the determination or decision about whether [a claimant] meet[s] the statutory definition of disability.” The Court’s review of the administrative record revealed no ambiguity or error indicating that the ALJ’s decision was based on less than substantial evidence. 42 U.S.C. § 405(g). With few exceptions, the opinion evidence in the record supports the ALJ’s decision.

Accordingly, the Court finds the ALJ’s findings of fact and conclusions of law, including Plaintiff’s RFC, is supported by substantial evidence and free of legal error. Additionally, the Court finds that there are no changed circumstances indicating a different outcome than the 2009 ALJ decision.

IV. CONCLUSION

The Court **RECOMMENDS** that Plaintiff’s Motion be **DENIED** and that Defendant’s Motion be **GRANTED**. This Report and Recommendation of the undersigned Magistrate Judge is submitted to the United States District Judge assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1).

IT IS HEREBY ORDERED that any written objection to this report must be filed with the court and served on all parties no later than **February 22, 2016**. The document should be captioned “Objections to Report and Recommendations.”

IT IS FURTHER ORDERED that any reply to the objections shall be filed with the Court and served on all parties no later than

1 **February 29, 2016.** The parties are advised that failure to file
2 objections within the specific time may waive the right to raise those
3 objections on appeal of the Court's order. *Martinez v. Ylst*, 951 F.2d
4 1153 (9th Cir. 1991).

5 Dated: **February 8, 2016**

6 
7 Hon. Mitchell D. Dembin
8 United States Magistrate Judge
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